

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

IN THE MATTER OF

**Copar Quarries of Westerly, LLC  
271 Church Street  
Bradford, Rhode Island 02808,**

**Respondent**

Proceeding under Section  
113 of the Clean Air Act

Docket No. CAA-01-2014-0001

**ADMINISTRATIVE COMPLAINT AND  
NOTICE OF OPPORTUNITY FOR A  
HEARING**

**I. STATEMENT OF AUTHORITY**

1. The United States Environmental Protection Agency – Region 1 (“EPA” or “Complainant”) issues this *Administrative Complaint and Notice of Opportunity for a Hearing* (“Complaint”) pursuant to Section 113(d) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7413(d), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, to Copar Quarries of Westerly, LLC (“Copar” or “Respondent”).

**II. NATURE OF THE ACTION**

2. This Complaint hereby notifies Respondent that EPA intends to seek civil penalties of up to \$37,500 per day for each violation of the *Standards of Performance for Nonmetallic Mineral Processing Plants* (“Nonmetallic Mineral Processing NSPS” or “NSPS”), found at 40 C.F.R. Part 60, Subpart OOO, and describes Respondent’s option to file an Answer to the Complaint and to request a formal hearing. In support of this Complaint, EPA alleges the following:

### **III. STATUTORY AND REGULATORY AUTHORITY**

3. Section 111 of the CAA, 42 U.S.C. § 7411, requires that EPA establish standards of performance for new sources of certain categories of stationary sources.

4. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated the Nonmetallic Mineral Processing NSPS, found at 40 C.F.R. Part 60, Subpart OOO.

5. Pursuant to 40 C.F.R. § 60.1, such standards of performance apply to the owner or operator of any stationary source that contains an affected facility, the construction or modification of which is commenced after the date of publication of any standard or proposed standard applicable to that facility.

6. The effective date of the Nonmetallic Mineral Processing NSPS was August 1, 1985. See 50 Fed. Reg. 31328 (August 1, 1985). Amendments to the NSPS were effective on April 28, 2009. See 74 Fed. Reg. 19309 (April 28, 2009). Accordingly, each owner or operator of an affected facility that commenced construction, reconstruction, or modification after August 31, 1983 is subject to the requirements of the NSPS as promulgated on August 1, 1985. See 40 C.F.R. § 60.670(e). Each owner or operator of an affected facility that commenced construction, reconstruction, or modification on or after April 22, 2008 is subject to the further requirements of the NSPS as promulgated on April 28, 2009. See 40 C.F.R. § 60.674(b).

7. The Nonmetallic Mineral Processing NSPS applies to affected facilities in portable nonmetallic mineral processing plants with a capacity of greater than 150 tons per hour. 40 C.F.R. § 60.670(a) and (c).

8. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§7413(a) and (d), provide for the assessment of penalties for violations of CAA Section 111 and of any regulations promulgated

thereunder. See 42 U.S.C. § 7413(a) and (d); 40 C.F.R. Part 19.4, Table 1 (civil penalties may be assessed of up to \$37,500 per violation per day).

9. When the first alleged date of a CAA violation occurs more than twelve (12) months prior to the initiation of an administrative action and/or the amount of the penalty sought exceeds \$295,000, EPA and the Department of Justice may jointly determine that an administrative, rather than judicial, forum is appropriate. 42 U.S.C. § 7413(d).

10. EPA has determined jointly with the Department of Justice that this matter is appropriate for an administrative penalty action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

#### **IV. GENERAL ALLEGATIONS**

11. Respondent is a limited liability corporation incorporated pursuant to the laws of the State of Rhode Island.

12. Respondent conducts stone crushing and sand and gravel processing at a facility located at 271 Church Street in Bradford, Rhode Island (the "Facility"). Respondent began operations at the Facility on or around January 3, 2011. Accordingly, the Facility was constructed after April 22, 2008.

13. On September 12, 2012, EPA conducted an on-site inspection of the Facility.

14. During the inspection, EPA observed the following equipment at the Facility:

- i. one McCloskey Model C-50 primary jaw crusher;
- ii. two McCloskey Model C-44 secondary cone crushers;
- iii. one McCloskey Model S190 primary screener;
- iv. one Fintech Model 542 primary screener;

- v. one McCloskey Model R155 scalper screener; and
- vi. one McCloskey Model R105 scalper screener.

15. The crushers observed during EPA's inspection together have a capacity to process rock and/or gravel of greater than 150 tons per hour.

16. Respondent's various crushers, screeners, and belt conveyors are "affected facilities" under the Nonmetallic Mineral Processing NSPS. See 40 C.F.R. § 60.670(a).

17. Respondent owns and/or operates a portable nonmetallic mineral (crushed and broken stone and gravel) processing plant, as defined in 40 C.F.R. § 60.671, with a capacity of more than 150 tons per hour.

18. The Rhode Island Department of Environmental Management ("RIDEM") issued a request for information to Respondent on March 28, 2012. Respondent responded to such request on July 26, 2012.

19. On January 28, 2013, EPA issued an Administrative Order ("AO") that gave Respondent notice that it was in violation of the NSPS. 42 U.S.C. § 7413(a). The AO also contained an administrative order directing Respondent to comply with the requirements of the NSPS. See 42 U.S.C. § 7413(a)(3) (authorizing EPA to issue administrative orders for violations of Subchapter I of the CAA).

## **V. VIOLATIONS**

20. Based upon EPA's compliance inspection conducted in September 2012 and additional information, EPA has identified the following violations of the CAA and its implementing regulations:

**First Count – Failure to Conduct Emissions Testing**

21. Complainant hereby incorporates by reference Paragraphs 1 through 20.

22. Pursuant to 40 C.F.R. § 60.672(b) of the NSPS (Standard for Particulate Matter), affected facilities without capture systems, such as those at the Facility, must meet the fugitive emission limits and compliance requirements in Table 3 of the NSPS within 60 days after achieving the maximum production rate at which the facility will be operated, but no later than 180 days after initial startup as required under 40 C.F.R. § 60.11.

23. Pursuant to 40 C.F.R. § 60.675(c) (Test Methods and Procedures), the owner or operator of an affected facility must determine compliance with 40 C.F.R. § 60.672(b) by performing EPA Reference Method 9 visible emission testing on all affected facilities (e.g., the crushers, screeners, and conveyor belts).

24. Respondent commenced its nonmetallic mineral processing operations on or about January 3, 2011 and, therefore, was required by the NSPS to conduct EPA Reference Method 9 visible emission testing to determine its fugitive emissions by July 2, 2011. Respondent conducted the required EPA Reference Method 9 visible emission testing on April 2, 2013, almost two years after the required date.

25. Accordingly, Respondent violated 40 C.F.R. §§ 60.672(b) and 60.675(c), which constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a) and (d); 40 C.F.R. Part 19.4 (Table 1).

**Second Count – Failure to Maintain an Inspection Logbook**

26. Complainant hereby incorporates by reference Paragraphs 1 through 25.

27. Pursuant to 40 C.F.R. § 60.674(b) (Monitoring of Operations) and 40 C.F.R. § 60.676(b) (Reporting and Recordkeeping), the owner or operator of an affected facility for which construction, reconstruction, or modification commenced on or after April 22, 2008 that uses wet suppression to control emissions from the affected facility must perform monthly periodic inspections to check that water is flowing to discharge spray nozzles in the wet suppression system. The owner or operator must record each inspection of the water spray nozzles, including the date of each inspection and any corrective action taken, in the logbook required by 40 C.F.R. § 60.676(b).

28. Respondent uses wet suppression to control particulate emissions from its affected facilities. Respondent did not begin recording the monthly inspection dates of the wet suppression system until January 3, 2012. In addition, on February 22, 2012, the water pump that supplies water to the wet suppression system broke down and needed to be replaced. Although Respondent halted operations until the water pump was replaced, Respondent failed to include the corrective action taken to replace the water pump in its monthly inspection logbook.

29. Accordingly, Respondent violated 40 C.F.R. §§ 60.674(b) and 60.676(b), which constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a) and (d); 40 C.F.R. Part 19.4 (Table 1).

**Third Count – Failure to Submit Notification of Startup Date**

30. Complainant hereby incorporates by reference Paragraphs 1 through 29.

31. Pursuant to 40 C.F.R. § 60.676(i) (Reporting and Recordkeeping), the owner or operator of an affected facility is required to submit to EPA a notification of the actual date of



initial startup of each affected facility. Such notification must be postmarked within 15 days after the actual date of initial startup. 40 C.F.R. § 60.7(a)(3).

32. Respondent did not provide timely notification to EPA regarding the actual date of initial startup of its stone crushing and gravel processing equipment. Respondent provided such notification to EPA on March 27, 2013.

33. Accordingly, Respondent violated 40 C.F.R. §§ 60.676(i) and 60.7(a)(3), which constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a) and (d); 40 C.F.R. Part 19.4 (Table 1).

## **VI. PROPOSED CIVIL PENALTY**

34. By this Complaint, Complainant seeks to assess civil penalties against Respondent of up to \$37,500 per day per violation for violations occurring after January 12, 2009. See 42 U.S.C. § 7413(d)(1); 40 C.F.R. Part 19.4 (Table 1); see also Pub. L. 104-134 (Civil Monetary Inflation Rule).

35. In determining the amount of the penalty to be assessed under Section 113 of the CAA, EPA must take into consideration the size of the violator's business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violations, payment by the violator of penalties previously assessed for the same violations, the economic benefit of the violations, the seriousness of the violations, and such other factors as justice may require. See CAA Section 113(e), 42 U.S.C. § 7413(e).

36. To assess a penalty for the alleged violations set forth in this Complaint, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA's *Clean Air Act Stationary Source Penalty Policy* ("Penalty Policy"),

dated October 25, 1991, a copy of which is enclosed with this Complaint. The Penalty Policy assigns penalty components reflecting the seriousness or the gravity of the violations and the size of the violator's business. The Penalty Policy also provides for a penalty component based on the estimated economic benefit Respondent derived from the violations. Adjustments to a proposed penalty are considered in light of the violator's degree of willfulness or negligence in committing the violations, its degree of cooperation with the EPA, any good faith efforts to comply, and any pertinent compliance history or previous penalty payments for the same violation. The Penalty Policy provides a rational, consistent, and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

37. Pursuant to 40 C.F.R. § 22.19, within 15 days after Respondent files its prehearing information exchange, Complainant will specify the proposed penalty and explain how the proposed penalty was calculated. Any proposed penalty in this matter will be developed based upon the best information available to Complainant, but any such penalty may also be adjusted if Respondent is able to establish that the proposed penalty would impair its ability to continue in business by providing Complainant with adequate financial documentation.

38. As required by 40 C.F.R. § 22.14(a)(4)(ii), a brief explanation of the penalty sought for each violation is set forth below. Each Count described below constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a) and (d); 40 C.F.R. Part 19.4 (Table 1).

**First Count – Failure to Conduct Emissions Testing**

39. From at least July 2, 2011 to April 1, 2013, Respondent failed to conduct the required EPA Reference Method 9 visible emission testing. EPA has determined that



nonmetallic mineral processing plants cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Numerous scientific studies link exposure to particulate matter to a broad range of respiratory problems, premature mortality, and increased hospitalization. Children, older adults, and people with pre-existing heart and lung disease are particularly vulnerable to the adverse effects of particle pollution. Emission of particulate matter also causes environmental damage when it settles on the ground or water. Settling of particulate matter depletes nutrients in soil, damages forests and farm crops, changes the nutrient balance in large river basins and coastal waters, and increases the acidity of lakes and streams. See generally, 71 Fed. Reg. 61,144 (Oct. 17, 2006) (final rule revising national ambient air quality standards for particulate matter). EPA has also determined that a reduction in particulate emissions can be achieved by application of best demonstrated technology at nonmetallic mineral processing plants. Accordingly, conducting the Method 9 emissions testing is essential to ensure that facilities do not emit particulate matter in excess of the NSPS regulatory limits.

#### **Second Count – Failure to Maintain an Inspection Logbook**

40. From the date it commenced operations on or about January 3, 2011, Respondent did not begin recording the monthly inspection dates of its wet suppression system until January 3, 2012. The purpose of such inspections is to ensure continuous compliance with the fugitive emission limits by detecting and correcting operational problems with the water sprays of the wet suppression system. Proper record keeping of the inspections is essential to ensure compliance with the NSPS provisions regarding inspection and maintenance of the water suppression system. Without such record keeping, EPA will have no way of knowing whether Respondent

has conducted the proper inspections of the water suppression system or whether Respondent has implemented any corrective actions. As stated in Paragraph 45 above, the emission of particulate matter over the regulatory limit may reasonably be anticipated to endanger public health or welfare.

### **Third Count – Failure to Submit Notification of Startup Date**

41. From the date it commenced operations on or about January 3, 2011 until March 26, 2013, Respondent did not provide notification to EPA regarding the actual date of initial startup of all of its stone crushing and gravel processing equipment. Respondent provided such notification on March 27, 2013. Submitting such notice to EPA is very significant to the regulatory scheme of the NSPS. Without such notification, EPA would have no way of knowing whether the Facility was subject to the NSPS.

### **VII. OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER**

42. In accordance with Section 113 of the CAA and 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact alleged in this Complaint, or to contest the appropriateness of the proposed penalty. **To request a hearing, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square – Suite 100 (Mail Code ORA18-1)  
Boston, Massachusetts 02109-3912

43. Respondent shall serve copies of the Answer and any subsequent pleadings which Respondent files in this action to the following address:

John W. Kilborn, Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square – Suite 100 (Mail Code OES04-3)  
Boston, Massachusetts 02109-3912

44. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22 (copy enclosed). See 40 C.F.R. § 22.15 for the required contents of the Answer.

### **VIII. DEFAULT ORDER**

45. Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17 if the Respondent fails to file a timely Answer to the Complaint. For the purposes of this action only, default by Respondent would constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in the default order would be due and payable by Respondent without further proceedings after the default order becomes final under 40 C.F.R. § 22.27(c).

### **IX. SETTLEMENT CONFERENCE**

46. Respondent may confer informally with EPA concerning the alleged violations. Such a conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement would be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer of EPA Region I.

47. Please note that a request for an informal settlement conference does not extend the period for filing a written Answer. To explore the possibility of settlement in this matter, Respondent should contact John W. Kilborn, Senior Counsel, at (617) 918-1893. Pursuant to 40 C.F.R. § 22.5(c)(4), John W. Kilborn is authorized to receive service on behalf of EPA.

*Susan Studlien acting for*  
Susan Studlien, Director

11-12-13  
Date

Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1  
Five Post Office Square, Suite 100  
Boston, MA 02109-3912

Attachments: Clean Air Act Stationary Source Penalty Policy  
Consolidated Rules of Practice: 40 C.F.R. Part 22